

THIS IS A NON-CONTRACTUAL  
CONVEYANCE PURSUANT TO NEW  
HAMPSHIRE RSA 78-B:2, IX AND IS  
EXEMPT FROM THE NEW HAMPSHIRE  
REAL ESTATE TRANSFER TAX. THIS  
CONVEYANCE IS EXEMPT FROM L-  
CHIP FEES PURSUANT TO RSA 478:17-  
g, II(a)

**CONSERVATION EASEMENT DEED  
CASSIER FOREST PROPERTY**

The **TOWN OF RAYMOND**, a municipal corporation situated in the County of Rockingham, State of New Hampshire, acting through its Conservation Commission pursuant to New Hampshire RSA 36-A:4, having a mailing address of 4A Epping Road, Raymond, New Hampshire 03077 (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns), is granting an easement to Bear-Paw Regional Greenways for the sole purpose of conservation and the fee interest in the pProperty will be retained by the Grantor as the Lillian Cassier Memorial Forest.

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for consideration paid, with WARRANTY covenants, grants in perpetuity to

**BEAR-PAW REGIONAL GREENWAYS**, a New Hampshire not-for-profit corporation, situated in the County of Rockingham, State of New Hampshire, with a mailing address of Post Office Box 19, Deerfield, New Hampshire 03037 (hereinafter referred to as the "Grantee", which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns) and the town Grantor shall retain all property rights, except as expressly provided herein.

the **CONSERVATION EASEMENT** (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") being unimproved land consisting of approximately        +/- 364.5 +/- acres situated        on West Shore Drive in the Town of Raymond, County of Rockingham, State of New Hampshire, shown as        on a plan entitled "      ", "Conservation Easement / Boundary Plan, Tax Map 39 Lot 6, Lillian Cassier Memorial Forest, West Shore Drive, Raymond". prepared by       , Jones & Beach Engineers, Inc., dated       , and recorded herewith in the Rockingham County Registry

of Deeds, and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

#### 1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes (herein referred to as the "Purposes") for the public benefit:

A. The enhancement and enlargement of over 5,872 acres of protected land that is near by the Property, said other land including the Robinson Hill easement (56 acres), the Willoughby easement (23 acres), the Stillbach easement (383 acres), and Pawtuckaway State Park (5,410 acres);

B. The protection of land within an 11,000-acre contiguous block of unfragmented lands that includes Pawtuckaway State Park;

C. The conservation and protection of open spaces, particularly the conservation of the productive forestland of which the Property consists and of the wildlife habitat thereon and the long-term protection of the Property's capacity to produce economically valuable forestry products;

D. The scenic enjoyment of the general public, including approximately \_\_\_\_\_ over 1,700 feet of undeveloped frontage on \_\_\_\_\_; West Shore Drive, Ferndale Road, and Briar Road, together with approximately 730 feet of undeveloped frontage on Governors Lake;

E. The preservation of the quality of groundwater and surface water resources on and under the Property;

F. The preservation of the Property for the low-impact, non-commercial, outdoor educational or recreational use of the general public for such activities as hiking, wildlife observation, cross-country skiing, snowmobiling (subject to at least six inches of snow on the ground), OHRV use (if/when such is ever allowed in designated portions of the Property by Town ordinance), fishing and hunting; and

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2009 Master Plan of the Town of Raymond:

- Land Use Objective 1.1 - "Preserve natural features that contribute to Raymond's character and quality of life such as lakes, rivers, ponds, streams, wetlands, woodlands, wildlife habitats, scenic views, and open spaces."
- Natural Resources Goal 1 - "Protect the community's groundwater/drinking water supplies for existing and future generations."
- Natural Resources Goal 2 - "Provide for preservation and connectivity of open spaces." and Natural Resources Objective 2.1 - "Preserve and protect priority open spaces and forest lands for wildlife as well as recreational activities in designated conservation areas, such as Flint Hill, the Dearborn property and the Cassier Town Forest."

- Natural Resources Goal 3 – “Preserve Raymond’s forests, farmlands, and prime agricultural soils.”

and with New Hampshire RSA Chapter 79-A, which states:

It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources.

These purposes and the characteristics of the Property are also consistent with the conservation goals of the Grantee, including:

- The protection of conservation land within large contiguous blocks of unfragmented lands in southeastern New Hampshire;
- The protection of surface waters, groundwater and wetlands; and
- The protection of habitat for native plant and animal species.

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Easement hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS (Subject to the Reserved Rights specified in Section 3, below.)

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry, including timber harvesting, as described below, and provided that the capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities.

i. For the purposes hereof, “agriculture” shall include orchard, animal husbandry, floricultural, and horticultural activities; the production of plant and animal products for domestic or commercial purposes; and the cutting and sale of products produced on the Property of the Grantor (such as pick-your-own fruits and vegetables and maple syrup), including the sale of products which are produced locally (such as fruits, vegetables, maple syrup and small craft items), provided that all the products produced on the Premises make up at least that percentage of the product sales in dollar volume established by New Hampshire RSA 21:34-a, as may be amended from time to time, to qualify “farm roadside stands” as agricultural and not commercial operations, all as not detrimental to the purposes of this Easement.

ii. Agriculture on the Property shall be performed in accordance with a comprehensive conservation plan for the sites and soils of the Property developed utilizing the standards and specifications of the U.S. Natural Resources Conservation Service, or similar successor agency then active. Agricultural management activities shall be conducted in accordance with the then-current scientifically based practices recommended by the University

of New Hampshire Cooperative Extension, USDA Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. There shall be no pesticides, chemicals or any toxins used in the agricultural operations allowed on the Property

iii. For the purposes hereof, "forestry" shall include the planting, growing, cutting and sale of forest trees of any size capable of producing timber or other forest products; the production and sale of products produced on the property including Christmas trees and maple syrup; those forest practices employed primarily to enhance or protect wildlife habitat; and the construction of roads or other access ways for the purposes of removing forest products from the Property and for improving non-commercial recreational opportunities.

iv. Forestry on the Property shall be performed, to the extent reasonably practicable, in accordance with the following goals:

- Maintenance of soil productivity;
- Protection of water quality, wetlands and riparian areas;
- Maintenance or enhancement of wildlife habitat;
- Maintenance or enhancement of the overall quality of forest products;
- Maintenance or enhancement of scenic quality;
- Protection of unique or fragile natural areas;
- Protection of unique historic or cultural features; and
- Conservation of native plant and animal species, and natural communities.

v. Forestry on the Property shall be performed in accordance with a written forest management plan ("Management Plan") prepared by a forester licensed by the State of New Hampshire and approved by the Grantee. Should such licensed professionals not exist, said plan may be prepared by another similarly qualified person, said person approved in advance and in writing by the Grantee. The plan shall include a statement of landowner's objectives and specifically address the long-term protection of those values for which this Easement is granted, as described in Section 1, above. Said plan shall have been prepared not more than ten (10) years prior to the date that any harvesting is expected to commence, or shall have been reviewed and updated as required by said forester at least thirty (30) days prior to said date.

vi. At least thirty (30) days prior to the commencement of timber harvesting activities, the Grantor shall submit a written certification to the Grantee, signed by a licensed professional forester or other qualified person, said other person to be approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Easement. The Grantee may request the Grantor to submit the plan itself to the Grantee for the Grantee's approval within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forestry activities in compliance with this Easement, and that the actual activities on the Property will determine compliance therewith.

vii. The Management Plan shall include a statement of landowner objectives, and shall specifically address:

- The long-term protection of those Purposes and values for which this Easement is granted, as described in Section 1 above; and
- The goals in Section 2.A.iv. above.

viii. Forestry shall be supervised by a licensed professional forester or other qualified person approved in advance and in writing by the Grantee.

ix. Forestry shall be carried out in accordance with all applicable local, state and federal laws and regulations, and, to the extent reasonably practicable, in accordance with the then current, generally accepted best management practices for the sites, soils and terrain of the Property. (For references, see *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire* (J.B. Cullen, 1996), *Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire* (New Hampshire Forest Sustainability and Standards Work Team, 1997) or similar successor publications.)

xi. No management activity shall be undertaken in a manner that is detrimental to the Purposes of this Easement.

xii. Unless otherwise directed by the voters of Raymond, all revenues received from such agricultural and/or forestry operations shall be deposited in the Town's General Fund.

B. The Property shall not be subdivided. The Grantor further covenants and agrees not to undertake any action that would have the effect of subdividing or conveying any part of the Property.

C. No structure or improvement, including, but not limited to, a dwelling (permanent, seasonal or temporary), any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, telecommunications and/or wireless communications facility, tower, windmill, or mobile home, shall be constructed, placed or introduced onto the Property. However, ancillary structures and improvements, including, but not limited to, a road, dam, fence, bridge, culvert, or shed may be constructed, placed or introduced onto the Property only as necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or non-commercial outdoor recreational uses of the Property and, for forestry uses, consistent with the forest management plan required in Section 2.A.v, above, and provided that they are not detrimental to the Purposes of this Easement. No ancillary structure or improvement not detailed in the forest management plan may be constructed, placed or introduced onto the Property without the prior review by and written approval of the Grantee.

D. No removal, filling or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

- i. Are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or non-commercial outdoor recreational uses of the Property, and for forestry uses, consistent with the forest management plan required in Section 2.A.v,

above;

ii. Do not harm state or federally recognized rare, threatened or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and

iii. Are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or non-commercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Easement.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, ~~water~~, or other similar materials from the Property, except in connection with any improvements made pursuant to the provisions of Sections 2.A, C, D, or E, above and/or Section 3, below.

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G. There shall be no dumping, injection, burning, or burial of manmade materials or materials then known to be environmentally hazardous.

H. Except those of record, and as otherwise allowed within this Easement, there shall be no rights-of-way, easements of ingress or egress, driveways or roads constructed, developed or maintained into, on, over, under, or across the Property without the prior written approval of the Grantee.

I. There shall be no posting to prohibit the public from accessing and using the forested portions of the Property, through the auspices of the Grantee, for traditional, non-motorized, noncommercial, non-intensive outdoor educational or recreational purposes. Notwithstanding the foregoing, the Grantor and the Grantee may mutually agree in writing to restrict access to and use of all or part of the Property to the extent and for the duration necessary to assure safety, to permit necessary maintenance, or to preserve important scenic, ecological or other conservation values of the Property.

### 3. RESERVED RIGHTS

A. The Grantor reserves the right to make, construct, maintain, repair, replace and relocate, at the Grantor's sole expense, up to two (2) parking areas with a combined surface area up to 10,000 square feet in size within 500 feet of existing road frontage on Briar Road, Harriman Road, Ferndale Road, Memorial Lane, West Shore Drive, or West Shore Road, as identified on the Plan. The parking areas shall consist of a gravel or permeable surface and shall be constructed with the minimum disturbance necessary in accordance with all applicable local,

state, federal, and other governmental laws and regulations.

B. The Grantor reserves the right to construct and maintain a structure, in the vicinity of each of the parking areas permitted in Section 3.A, intended to further the accomplishment of the non-commercial outdoor educational or recreational uses of the Property, provided that their construction and required maintenance are not detrimental to the Purposes of this Easement. Construction shall proceed only with the prior review by and written approval of the Grantee, which approval shall not be unreasonably withheld.

C. The Grantor shall have the right to use and manage the Property for any and all uses consistent with the Purposes and use limitations herein, including, but not limited to the right to clear, construct and maintain trails for walking, cross country skiing and other limited low impact, transitory, non-motorized, non-commercial outdoor educational or recreational activities and snowmobiling (and OHRV use in designated areas of the Property if/when such is allowed by Town ordinance) within and across the Property, provided said trails are consistent with and not detrimental to the Purposes of this Easement, conform to best practices recommended by the Appalachian Mountain Club or similar trail-maintaining organization. (For reference, see The Complete Guide to Trail Building and Maintenance (C. Demrow, D. Salisbury, Appalachian Mountain Club) or similar successor publication), and are constructed and maintained in accordance with a written management plan approved by the Grantee, which approval shall not be unreasonably withheld.

D. ~~Subject to written approval from the Grantee, which shall not be unreasonably withheld,~~ the Grantor reserves the right to withdraw ground water and remove it from the Property for public use. All such water withdrawals shall be made in a manner that ensures that the easement goals are maintained and in accordance with all State and Federal water supply rules that are applicable at the time of development and in accordance with the conditions of the State permit-granted authorization. Prior to the commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

For the purpose hereof, permitted activities, facilities, and improvements in conjunction with said withdrawal and/or removal shall consist of: 1) the installation, maintenance, monitoring, and replacement of temporary wells for exploratory and/or testing purposes; 2) long-term water production wells; 3) monitoring wells; 4) pumping stations; 5) pipelines, and 6) drinking water filtration and treatment facilities, and ancillary improvements such as but not limited to gravel or permeable-surface roads, signs, and electric utilities. Said activities, facilities, and improvements may only occur if they are physically required hydrologically reasonable to be located on the Property. To the extent possible, said activities, facilities and improvements shall be located on an area not subject to the easement or be located underground or partially below ground in order such a manner to provide the minimum disturbance to one's view of the landscape. ~~Other major facilities including, but not limited to, storage tanks, shipping facilities, major pumping facilities, monitoring facilities, office and laboratory facilities for employees, shall not be located on the Property.~~

E. ~~Subject to written approval from the Grantee, which shall not be unreasonably withheld,~~ the Grantor reserves the right to maintain the existing man-made pond situate on the Property, as

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shown on page 7 and referenced on the cover page of the Plan, including the dam and access thereto. Such maintenance activities shall be undertaken in accordance with a plan developed by the U.S. Natural Resource Conservation Service, other similar agency then active, or consulting service approved by the Grantee in consultation with the Grantor. Furthermore, the Grantor reserves the right to remove from the Property any dirt, rocks, mud or other associated materials resulting from the maintenance of said pond.

F. The Grantor reserves the right to have professionally conducted archaeological activities conducted on the Property, including without limitation, survey, excavation and artifact removal, following submission of an archaeological field investigation plan to, and its approval in writing by, the State Archaeologist of the New Hampshire Division of Historic Resources (or appropriate successor official), with written notice to the Grantee. Any such archaeological investigations shall be conducted by qualified individuals who meet the Secretary of Interior's Professional Qualification Standards for Archaeology, or subsequent standards. Any area disturbed by any such activities shall be restored to substantially its prior condition within nine (9) months after such activities cease.

G. ~~Subject to the written approval of the Grantee, which shall not be unreasonably withheld,~~ the Grantor reserves the right to construct and maintain any necessary drainage improvements associated with either the above-referenced parking areas, water withdrawal facilities and improvements, and/or the adjacent portions of ~~roads and trails~~ on the Property, but only to the extent that there are physical constraints which require this for the proposed or actual uses.

H. Grantor reserves the right to utilize portions of the Property for wetlands creation as part of any mitigation efforts required for approved development of other properties within the Town in accordance with all applicable Town requirements, including but not limited to the Expandable Pooled Mitigation Plan as it may be amended from time to time, or any successor pooled mitigation plan then in effect, together with all applicable regulations of the NH Department of Environmental Services. Any revenues generated from such activities, including but not limited to revenues generated by the sale of excavated gravel or other materials, shall be deposited in the Town's General Fund unless otherwise required by statute to be deposited in another fund of the Town or otherwise directed by the voters of Raymond.

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F.H.I. These reserved rights are exceptions to the use limitations set forth in Section 2. above.

G.II. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights.

#### 4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. The Grantor agrees to notify the Grantee in writing no later than ten (10) days before the transfer of title to the Property.

B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or



assessments thereon.

## 5. BENEFITS, BURDENS AND ACCESS

A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable ~~only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or subject to the approval of the Grantor, which approval shall not be unreasonably withheld,~~ to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

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B. The Grantee shall have reasonable access to the Property and all of its parts to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

C. The Grantee has the right to install and maintain small unlighted signs visible from public vantage points and along boundary lines for the purpose of identifying the Grantee and informing the public and abutting property owners that the Property is under the protection of this Easement.

## 6. ALTERNATE DISPUTE RESOLUTION

A. The Grantor and the Grantee desire that issues arising from time to time concerning prospective uses or activities in light of the conservation purposes of this Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if a party becomes concerned about the consistency of any proposed use or activity with the purposes of this Easement, wherever reasonably possible, the concerned party shall notify the other party of the perceived or potential problem, and explore the possibility of reaching an agreeable resolution.

B. If informal dialog does not resolve the issue, and the Grantor agrees not to proceed with the proposed use or activity pending resolution of the on-going dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall agree on a single impartial mediator who shall be an attorney licensed to practice law in the State of New Hampshire or an experienced land use or land conservation professional, both of whom must have experience with conservation easements and training in mediation. Each party shall pay its own attorneys' fees, and the costs of mediation shall be split equally between the parties.

C. If the dispute has not been resolved by mediation within sixty (60) days after delivery of the mediation request, or the parties are unable to agree on a mediator within thirty (30) days

after delivery of the mediation request, then, upon the Grantor's continued agreement not to proceed with the disputed use or activity pending resolution, either party may refer the dispute to non-binding arbitration by request made in writing and in accordance with New Hampshire RSA 542. Within thirty (30) days of receipt of such a request, the parties shall select a single impartial arbitrator to hear the matter. The arbitrator shall be an attorney licensed to practice law in the State of New Hampshire with experience in conservation easements and applicable training and experience as an arbitrator. Judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The arbitrator shall be bound by and follow the substantive law of the State of New Hampshire and the applicable provisions of the US Internal Revenue Code. The arbitrator shall render a decision within thirty (30) days of the arbitration hearing.

D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, to require the restoration of the Property to its condition prior to the breach, and to recover such damages as appropriate.

E. Notwithstanding the availability of mediation and arbitration to address disputes concerning the consistency of any proposed use or activity with the purposes of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any New Hampshire court of competent jurisdiction to cause the cessation of any such damage or harm pending resolution of any dispute in accordance with this Section 6.

#### 7. BREACH OF EASEMENT – GRANTEE'S REMEDIES

A. If the Grantee determines that a breach of this Easement has occurred or is threatened, whether by a third party or the Grantor, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure said breach, and, where the breach involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Grantee. Such notice shall be delivered in hand to the Town Manager and the Chair of the Conservation Commission or by certified mail, return receipt requested.

B. If the Grantor fails, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, to undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage to the Property caused thereby, or fails to continue diligently to cure such breach until finally cured, the Grantee shall undertake any actions that are reasonably necessary to repair any damage in the Grantor's name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

C. The Grantee shall be entitled to recover damages from any person or entity directly or indirectly responsible for violation of the terms of this Easement or injury to any conservation values protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic or environmental values; but the Grantor shall only be held liable for those damages directly caused by Grantor's own gross negligence. Subject to such requirement but without otherwise limiting the Grantor's liability, ~~therefore, the Grantee, in its sole discretion, may~~ shall apply ~~any~~ all damages recovered to the cost of undertaking any corrective action on the Property.

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D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies under this Section 7 without prior notice to the Grantor or without waiting for the period provided for cure to expire.

E. The Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in Section 7.B, above, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Subject to the requirements of Section 7(C), above, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the responsible party, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by said party's breach of this Easement, shall be borne by the party directly or primarily responsible for the breach; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action, Grantee shall bear its own and Grantor's costs, including reasonable and necessary attorneys' fees incurred by Grantor in defending such action and the associated resolution efforts set forth in Section 6, above if it is determined that the enforcement action was initiated without reasonable cause or in bad faith.

G. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches, estoppel or prescription.

H. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate

significant injury to the Property resulting from such causes.

I. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section 7, against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

#### 8. DISCRETIONARY CONSENT

A. The Grantee's consent for activities otherwise prohibited herein may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Section 2 are deemed desirable by the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purposes of this Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (i) do not violate the Purposes of this Easement and (ii) either enhance or do not impair any significant conservation interests associated with the Property.

B. Notwithstanding the foregoing, the Grantor and the Grantee shall have no right or power to agree to any activities that would result in the termination of this Easement or to allow any residential, commercial or industrial structures, or any commercial or industrial activities, not provided for above.

#### 9. NOTICES

All notices, requests and other communications required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice to Grantor shall be specifically addressed to the Town Manager and the Chair of the Conservation Commission. Notice shall be deemed to have been given when so delivered or so mailed.

#### 10. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

#### 11. SEPARATE PARCEL

The Grantor agrees that for the purpose of determining compliance with any present or future regulation (other than those governing N.H. Current Use Assessment under RSA 79-A), bylaw, order, or ordinance (within this Section referred to as "legal requirements") of the Town of

Raymond, the State of New Hampshire or any other governmental unit, the Property shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Grantor, other than the Property, complies with any said legal requirements. The Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback, or other dimensional standard applicable to such land.

## 12. CONDEMNATION

A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate in whole or in part the Easement conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of condemnation or exercise of eminent domain, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking or lawful sale with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. The balance of the land damages recovered from such taking or lawful sale in lieu of condemnation or exercise of eminent domain shall be divided between the Grantor and the Grantee in proportion to the fair market value of their respective interests in that part of the Property condemned on the date of execution of this Easement. For this purpose and that of any other judicial extinguishment of this Easement, in whole or in part, the Grantee's interest shall be the amount by which the fair market value of the Property immediately prior to the execution of this Easement is reduced by the use limitations imposed hereby. The value of the Grantee's interest shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation. Any increase in value attributable to improvements made after the date of the Conservation Easement shall accrue to the party who made the improvements.

C. The Grantee's share of the proceeds shall be used on a conservation project in the Town of Raymond in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

## 13. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 5.A, above, accepts and records the additional easement.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

14. TOWN MEETING APPROVAL

The terms and conditions of this Easement shall be approved by the March 2011 Town Meeting before the Selectmen shall be obligated to execute this Easement.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Town of Raymond, Board of Selectmen  
Duly Authorized

\_\_\_\_\_  
Town of Raymond, Board of Selectmen  
Duly Authorized

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Town of Raymond, Board of Selectmen  
Duly Authorized

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Town of Raymond, Board of Selectmen  
Duly Authorized

\_\_\_\_\_  
Town of Raymond, Board of Selectmen  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_, SS

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me the undersigned officer,  
personally appeared \_\_\_\_\_,  
who acknowledged the foregoing to be their voluntary act and deed for the purposes therein  
contained.

Before me, \_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires: \_\_\_\_\_

ACCEPTED: BEAR-PAW REGIONAL GREENWAYS

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Duly Authorized

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Duly Authorized

Date: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me the undersigned officer, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who acknowledged themselves to be officers of Bear-Paw Regional Greenways, and acting in said capacity, and being authorized so to do, executed the foregoing instrument on behalf of Bear-Paw Regional Greenways as its voluntary act and deed for the purposes therein contained.

Before me, \_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires: \_\_\_\_\_



Appendix A